

Internal Revenue Service

Number: **200721009**

Release Date: 5/25/2007

Index Number: 104.00-00, 104.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EB:HW

PLR-152150-06

Date:

February 12, 2007

Legend

Plan =

State =

Statute =

Dear :

This is in reply to your letter dated October 30, 2006, requesting a ruling on behalf of the Plan concerning whether certain disability benefits paid under section 806.5 of the Statute are excludable from the gross income of recipients under section 104(a)(1) of the Internal Revenue Code (the Code).

Section 401 of the Statute requires employers in State to provide the pension benefits of the statewide defined benefit plan established by the Statute. Section 601(1)(a) of the Statute, however, permits employers to withdraw from the statewide pension plan if they establish and maintain a locally administered and financed alternative pension plan that is subject to section 601(1)(b) of the Statute.

Section 601(1)(b)(II) of the Statute stipulates that "The members of such plan hired before, on, or after April 7, 1978, shall be covered by the provisions of sections . . . 803 and . . . 807 . . . in lieu of any other defined disability and preretirement death benefits."

Sections 803(1) and (2) of the Statute provide that a member who is not eligible for the normal retirement pension described in section 403 or a local defined benefit retirement pension selected pursuant to section 704(3) or provided pursuant to article 30.5 and who becomes totally or occupationally disabled shall be retired from active service for disability and shall be eligible to receive disability benefits under section 806.5 of the

Statute. The annual disability benefits provided are based on a certain percentage of a member's annual base salary paid to the member immediately preceding retirement and an additional amount if the member had a spouse and dependent children at the time of the disability. Section 803(1)(a) and (b) and (2)(a) and (b) of the Statute.

Section 806.5(1) of the Statute provides that if "a member, who is otherwise eligible to apply for the disability retirement benefits under section ... 803, is required to terminate the member's regular employment due to a total disability ... that is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment, the member is eligible for a disability benefit in an amount provided for in section ... 803." Section 806.5(3) of the Statute states that "The board shall promulgate rules that specify standards for determining whether a member's disability is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of employment."

Section 804(2) of the Statute states that "the benefits payable under section ... 803 or ... 806.5 to any member ... who at the time of the award of such benefits is a member of a money purchase plan pursuant to this article ... shall be reduced by an amount that is the actuarial equivalent of the benefits such member receives from any such money purchase plan, whether the benefits received from the money purchase plan are paid on a periodic basis or in a lump sum."

Section 61(a) of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services.

Section 104(a)(1) of the Code provides that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to the employee for personal injury or sickness incurred in the course of employment. Section 1.104-1(b) of the regulations also states that this exclusion does not apply to the amount received either to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness, or to the extent that it is in excess of the amount provided in the applicable workmen's compensation act or acts.

The fact that the amount received as a disability retirement pension is computed with regard to the employee's salary prior to retirement does not disqualify the payment from

being in the nature of workmen's compensation. See, Rev. Rul. 85-104, 1985-2 C.B. 52; Rev. Rul. 75-500, 1975-500 C.B. 44; and Rev. Rul. 68-10, 1968-1 C.B. 50.

As authorized by sections 401 and 601 of the Statute, the taxpayer withdrew from the statewide defined benefit plan and established a locally administered and financed pension plan (the Plan). However, because the Plan does not separately provide defined disability benefits, section 601(1)(b)(II) requires that the members of the Plan must be covered by the benefits described in section 806.5 of the Statute. The disability benefits provided under section 806.5 of the Statute are offset by the benefits funded under the Plan pursuant to section 804(2) of the Statute.

Based on the representations made and authorities cited above, we conclude:

Section 806.5 of the Statute limits benefits to a class of employees with service-incurred injuries or disease and the benefits are not determined with reference to the employee's age, length of service or prior contributions. Accordingly, section 806.5 of the Statute is a statute in the nature of a workmen's compensation act.

Amounts paid under section 806.5 of the Statute, as funded through the Plan in the amounts of the offset provided by section 804(2) of the Statute, are excludable from the member's gross income under section 104(a)(1) of the Code.

No opinion is expressed as to the federal tax consequences of the transaction under any other section of the Code or Statute other than those specifically stated above.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Harry Beker, Chief
Health and Welfare Branch
Office of Division Counsel/Associate Chief
Counsel
(Tax Exempt & Government Entities)